

REMARKS/ARGUMENTS

Applicant respectfully submits that the rejection of the claims under 35 U.S.C. §103(a) over Kermode in view of Carter is improper, as the Office Action has failed to set forth a *prima facie* case of obviousness. In this regard, a *prima facie* case of obviousness requires that there be some suggestion or motivation to modify the cited references or to combine their teachings. Furthermore, there must be a reasonable expectation of success, and finally the prior art references must teach or suggest all claim limitations. As set forth in the previous response to Office Action and as further described herein, a *prima facie* case of obviousness has not been set forth. Accordingly, Applicant is under no obligation to submit evidence of nonobviousness. MPEP §2142. Accordingly, the contention in the Office Action that Applicant's prior arguments do not comply with 37 C.F.R. §1.11(c) is respectfully traversed.

The Office Action fails to set forth that either of the cited references teach or suggest all recited claim limitations, as the purported support in the references is woefully inadequate. With respect to claim 1, the Office Action contends that Kermode teaches "determining the time difference between a first program (channels M) being transmitted to a first receiver (120i) and a second program (channels n) transmitted to a second receiver (120ii) (column 4, lines 14-23 and figure 2)... ." Final Office Action, pp. 3-4. Even a cursory review of Kermode and particularly the cited portions belie the Office Action's contention. Instead, nowhere does this or any other portion of Kermode teach or suggest that a time difference is determined between first and second programs transmitted to first and second receivers. Instead, Kermode merely teaches that content is asynchronously sent to different receivers – there is no disclosure of determining time differences.

Still further, the mere teaching in Kermode that access latency declines with increasing network transfer speeds in no way teaches or suggests determining a time difference between first and second programs transmitted to first and second receivers. Nor does Carter meet this claimed subject matter. Instead, the Office Action contends that "Carter discloses a segment broadcasting system can significantly reduce client Latencies over staggered broadcasting system". Final Office Action, p. 4. However, this portion of Carter merely teaches the same thing that Kermode does, namely repeatedly transmitting different segments of a program on different channels. Nowhere does Carter teach or suggest determining a time difference between first and second programs transmitted to first and second receivers.

Furthermore, the Office Action fails to identify any teaching or suggestion in either reference that if this (non-existent) time difference is below a predetermined threshold, the time difference between the programs is reduced. In fact, the Office Action is entirely devoid of any assertion that any reference teaches or suggests comparison of a (non-existent) time difference to a predetermined threshold. Thus the Office action fails to set forth a *prima facie* case, and claim 1 is patentable.

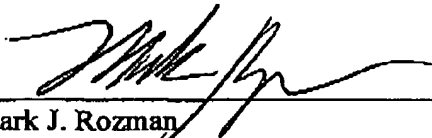
The Office Action further fails to set forth a *prima facie* case of obviousness, as there is no suggestion or motivation to modify the references or combine their teachings. Instead the Office Action merely states that since the references are within the same field of endeavor, it would have been obvious to improve the latency of distribution to conserve transmission bandwidth by minimizing transmission delay. However, nowhere is there any indication of how the reference must be combined in order to obtain the claimed subject matter. Furthermore, the fact that references can be combined is insufficient to establish a *prima facie* case of obviousness. MPEP §2143.01. Accordingly, the rejection of claim 1 is overcome.

For at least the same reasons, the rejections of independent claims 13 and 25 are similarly overcome. Furthermore, because all independent claims are non-obvious, all the dependent claims are similarly non-obvious. MPEP §2143.03

In view of these remarks, the application is now in condition for allowance and the Examiner's prompt action in accordance therewith is respectfully requested. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504.

Respectfully submitted,

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